

*Commonwealth of Virginia*  
**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Schneider National Bulk Carriers, Inc.  
FOR  
Unpermitted Discharge  
Incident Report ("IR") No. 291476**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Schneider National Bulk Carriers, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.



4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "IR" means Incident Report.
8. "Location" or "Site" means the location of the tractor trailer accident, on Interstate 77 Southbound, south of Mile Marker 40, within the interchange ramp from Interstate 77 South to Interstate 81 North, in Wytheville, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "Schneider" means Schneider National Bulk Carriers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Schneider National Bulk Carriers, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Schneider owns and operates an interstate trucking company which transports goods within the Commonwealth of Virginia.
2. The unnamed tributary to Reed Creek and Reed Creek are each classified as: New River Basin, Section 2, Class IV, Special Standard "v" for maximum temperature of the New River and its tributaries. The unnamed tributary to Reed Creek is listed in DEQ's 305(b) report as impaired for failure to support the aquatic life use due to poor Virginia Stream Condition Index (VSCI) scores. This section of Reed Creek is listed in DEQ's 305(b) report as impaired for failure to support the recreational use, due to bacteria from nonpoint sources originating from livestock, wildlife, pets, and humans. This section of Reed Creek is included in the *Bacteria Total Maximum Daily Load Development for Mill Creek, Cove Creek, Miller Creek, Stony Fork, Tate Run, South Fork Reed Creek, and Reed Creek in Wythe County, Virginia*. The TMDL report was approved by EPA on October 1, 2012 and by the State Water Control Board on March 25, 2013.
3. On July 11, 2019, the DEQ Southwest Regional Office (SWRO) received notification of a tanker truck accident in Wytheville, Virginia from the Wythe County Emergency Management Coordinator. SWRO staff responded to the accident, which occurred on Interstate 77 Southbound, south of Mile Marker 40, within the interchange ramp from Interstate 77 South to Interstate 81 North. Incident Report (IR) No. 291476 was assigned to this incident.

4. The tanker, owned by Schneider, was hauling approximately 6,000 gallons of Acronal N-CR 1131 latex polymer, of which approximately 4,000 gallons remained in the tanker and was offloaded. Approximately 2,000 gallons of polymer was spilled on the highway embankment. Polymer was observed in a farm pond, in an un-named tributary of Reed Creek and in Reed Creek. A plume of polymer 300 feet long was observed within Reed Creek.
5. Emergency Response and Training Solutions (ERTS) was retained by Schneider to manage and oversee response to the tanker spill. ERTS notified both the National Response Center and the Virginia Department of Emergency Management of the release within approximately five hours of the accident. ERTS then hired W. E. L., Inc. (WEL), a local environmental consultant and contractor firm, to clean up and remediate the spill. WEL personnel placed absorbents and plastic over the spill area, and utilized a vacuum truck to recover some polymer from the farm pond and ground.
6. DEQ staff visited the Site again, on July 12, 2019. The Site was secure, with plastic over the spill area. The streams were clearing, with some color still visible and a sheen or dried polymer noted. Staff observed a minimal plume in Reed Creek, with live darters present. The dissolved oxygen (DO) level in the farm pond was <1.0 mg/l. The DO levels in the unnamed tributary to, and in Reed Creek, were 7.7 mg/l and 8.0 mg/l, respectively. No adverse effects on invertebrate life or fish were observed in the farm pond, the un-named tributary to Reed Creek or in Reed Creek.
7. WEL personnel returned to the Site on July 15, 2020 and installed absorbent booms/filtration devices at four down-gradient locations.
8. DEQ staff visited the Site on July 26, 2020. Staff observed the farm pond and the unnamed tributary to Reed Creek. No sheen or residual polymer was observed.
9. ERTS submitted a Corrective Action Final Report, dated September 20, 2019 and received by DEQ on October 1, 2019, which provided details regarding response to, and cleanup of, the spill. The Report included waste disposal documentation.
10. DEQ SWRO issued NOV No. NOV-010-0919-WA to Schneider on September 26, 2019 for the unpermitted discharge of latex polymer to the farm pond, the unnamed tributary to Reed Creek and to Reed Creek.
11. A representative of Schneider contacted DEQ staff by e-mail on September 27, 2019, verifying receipt of, and agreeing with observations noted in, the NOV. The representative then discussed the incident and DEQ's enforcement process with DEQ staff by telephone on October 3, 2019.
12. The unnamed tributary to Reed Creek and Reed Creek are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
13. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

14. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. The Department has issued no discharge permits or certificates to Schneider for the discharge.
17. Based on the results of the July 11, 2019 field investigation, site visits on July 12, 2019 and July 26, 2019, the telephone conversation with a Schneider representative on October 3, 2019, and documentation submitted on September 27, 2019 and October 1, 2019, the Board concludes that Schneider has violated Va. Code § 62.1-44.5 and Regulation 9 VAC 25-31-50, by discharging the latex polymer to state waters, as described in paragraphs C(3) through C(11), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Schneider National Bulk Carriers, Inc., and Schneider National Bulk Carriers, Inc. agrees to pay a civil charge of \$5,687.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Schneider National Bulk Carriers, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If DEQ has to refer collection of moneys due under this Order to the Department of Law, Schneider National Bulk Carriers, Inc. shall be liable for attorneys’ fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Schneider for good cause shown by Schneider, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-010-0919-WA, dated September 26, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Schneider admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. Schneider consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Schneider declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Schneider to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Schneider does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Schneider shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Schneider shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Schneider shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Schneider. Nevertheless, Schneider agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Schneider has completed all of the requirements of the Order;
  - b. Schneider petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Schneider.

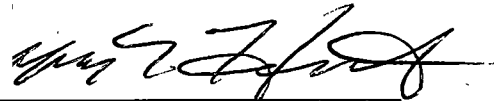
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Schneider from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Schneider and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Schneider certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Schneider to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Schneider.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Schneider voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13<sup>th</sup> day of November, 2020.



Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality





Schneider National Bulk Carriers, Inc. voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_ By: [Signature], Senior Vice-President, Operations  
(Jason Howe) (Senior Vice-President, Operations)  
Schneider National Bulk Carriers, Inc.

State Wisconsin  
~~Commonwealth of Virginia~~  
City/County of Braun

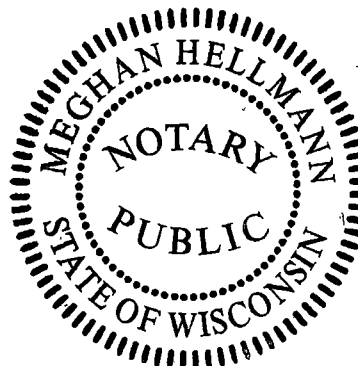
The foregoing document was signed and acknowledged before me this 17<sup>th</sup> day of  
September, 2020, by Jason Howe who is

Senior Vice-President, Operations of Schneider National Bulk Carriers, Inc. on behalf of the corporation.

[Signature]  
Notary Public  
207793  
Registration No.

My commission expires: 3/3/2023

Notary seal:



9/17/2020